

UNDERSTANDING THE 2017 HOUSING BILLS

Bay Area Planning Directors Association

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HOUSING LEGISLATION FRENZY?

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2017 HOUSING PACKAGE (PLUS)

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- AB 678
- SB 167
- AB 1515
- SB 166
- SB 35
- AB 879
- AB 72
- AB 1397
- AB 494
- SB 229
- SB 2
- SB 3
- AB 571
- AB 1521
- AB 1193
- SB 540
- AB 73
- AB 1568
- AB 1505

OVERVIEW

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- Changes in Processing Housing Applications
 - ▣ Housing Accountability Act
 - ▣ SB 35
 - ▣ 'No Net Loss'
- Return of Rental Inclusionary Requirements
- Housing Elements & Annual Reports
- Special Districts
- ADUs

HAA AND SB 35

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Housing Accountability Act

- Government Code Sec. 65589.5
- Affects all residential projects

SB 35

- Government Code Sec. 65913.4
- “Streamlining” for some residential projects

Both laws focus on “objective standards” and favor predictability over flexibility.

HAA INTENT LANGUAGE

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“The Legislature’s intent in enacting this section in 1982 and in expanding its provisions since then was to significantly increase the approval & construction of new housing for all economic segments of California’s communities by meaningfully and effectively curbing the capability of local governments to deny, reduce the density of, or render infeasible housing development projects. This intent has not been fulfilled.”

WHAT IS AN “OBJECTIVE” STANDARD?

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SB 35 definition:

- “Standards that involve no personal or subjective judgment by a public official and are uniformly verifiable by reference to an external and uniform benchmark or criterion available and knowable by both the development applicant and the public official prior to submittal.”
- Examples:
 - ▣ Height, setbacks, lot coverage, % open space, density, FAR, etc.

WHAT IS NOT “OBJECTIVE”?

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Standards found not to be “objective:”

- “Address unmet need for senior housing.”
- “Special care shall be taken to avoid obstructing views to the surrounding hills.”
- “Produce high quality authentic design.”
- “Reflect look and feel of the community.”

Honchariw v. County of Stanislaus (2011)

- Map Act finding that “the site is not physically suitable for the proposed development” is not objective

HOUSING ACCOUNTABILITY ACT (65589.5)

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- If desire to deny or reduce density:
 - ▣ Identify **objective** standards project does not comply with.
 - ▣ If project complies with all, must find specific adverse effect on public health & safety.
- “Specific adverse effect” must be significant, quantifiable, direct, and unavoidable based on written health & safety standards on date project deemed complete, & no way to mitigate

HAA APPLICABILITY

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Applies to **ALL** “housing development projects” and emergency shelters:

- ▣ Residences only;
- ▣ Transitional & supportive housing;
- ▣ Mixed use projects with at least 2/3 the square footage designated for residential use.

Affordable AND market-rate

HAA PROCESSING REQUIREMENTS

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- Within 30-60 days of completeness the City must:
 - Provide list of any inconsistencies with any “plan, program, policy, ordinance, standard, requirement or similar provision”;
 - Explain why the project inconsistent; or
 - “Deemed consistent.”

HAA PROCESSING REQUIREMENTS

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- Also “**deemed consistent**” if: “substantial evidence that would allow a reasonable person to conclude” is consistent
 - ▣ Developer may submit own evidence re: consistency
- City findings must be based on ‘preponderance of the evidence,’ not merely ‘substantial evidence’
- Attorneys’ fees to both market-rate & affordable
- \$10K/unit fine if ignore court

SB 35: 'STREAMLINING'

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Determine if Jurisdiction is Subject to SB 35

Not enough building permits to satisfy RHNA

OR

No Annual Report for 2 Years

Determine if Project is Eligible for Streamlining

2 or more units in urbanized area
zoned or planned for residential

&

Meets all objective standards

&

Meets affordable housing and
labor requirements

Determine if Exclusion Applies

Project site may not be on list of exclusions

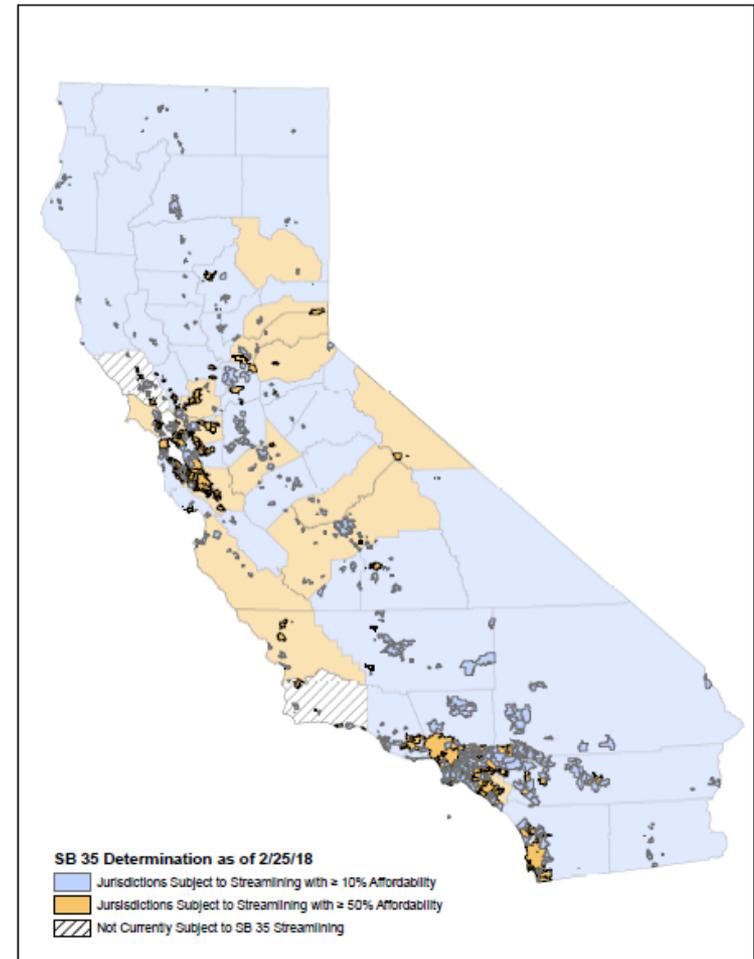
OR

Project must not require subdivision unless LIHTC-
funded and/or meets labor requirements

SB 35 PROCESSING REQUIREMENTS

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- No CEQA review
- Ministerial review ONLY based on ‘objective’ standards
- Review can’t last more than 90 – 180 days from submittal



'NO NET LOSS' OF RHNA SITES (65863)

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- Applies when:
 - ▣ Any site in inventory either downzoned to reduce density; or approved at lower density than shown;
OR
 - ▣ Site approved with fewer units at the income level shown in the inventory.
- Only applicable to counties and general law cities.

RHNA SITE INVENTORY

- Must designate specific sites that can “accommodate” the RHNA at each income level during the planning period (65583.2)
- Sites “accommodating” lower income housing must be at “default densities” of 10 – 30 du/A

APN	Zone	DU/A	Acres	Units	Use	Income Category
041-0042-002	R-3	20-30 du/ac	2.0	40	Vacant	Lower
037-0400-027	R-2	10-20 du/ac	0.75	7	Duplex	Moderate
038-0100-040	R-1	5-10 du/ac	4.5	22	Vacant	Above Moderate
039-1100-039	CMU	20 du/ac	1.5	25	Parking	Moderate

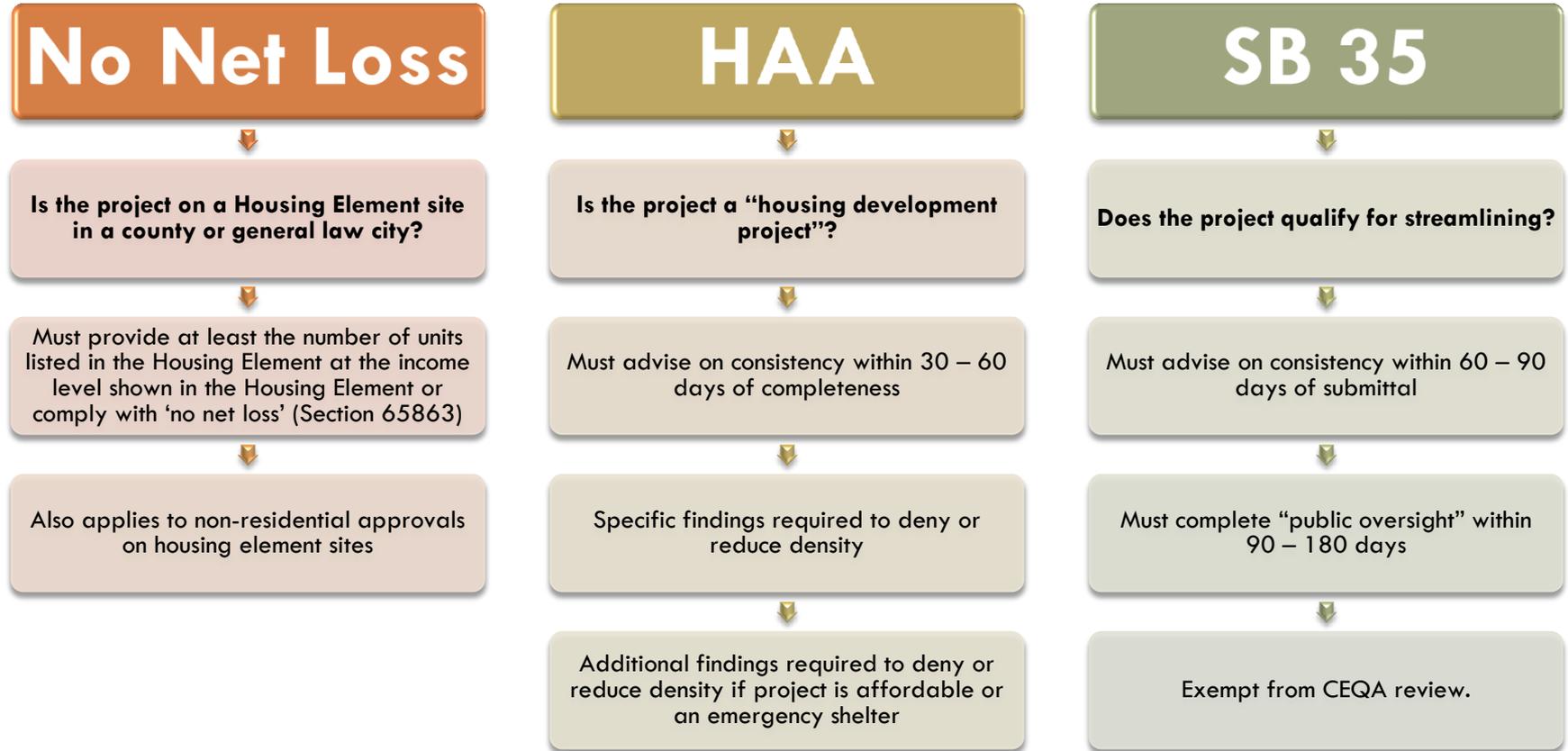
NO NET LOSS REQUIRED FINDINGS

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- Reduction in density/income level OK if:
 - ▣ Reduction consistent with GP and Housing Element; and
 - ▣ Remaining sites in Element are adequate at all income levels. Must quantify unmet need and remaining capacity by income level.
- Options:
 - ▣ Remaining sites in Housing Element adequate to meet the RHNA at all income levels; or
 - ▣ County approved more units on some site than shown in inventory or has other units at that income category; or
 - ▣ Other sites NOT in Housing Element can make up difference; or
 - ▣ Another site “identified and made available.” Time limit of 180 days for income category only.

PUTTING IT ALL TOGETHER

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PROPOSED LEGISLATION: STREAMLINING

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- **AB 2631 (Allen) – Streamlining for BMR Housing**
 - Streamline ministerial approval (SB 35-light) for low or moderate income housing development of 25 or less units located on a vacant site in a public transit corridor
- **AB 3194 (Daly) - Housing Accountability Act**
 - Provide that project consistent with zoning ordinance if the zoning ordinance does not allow the maximum residential use, density or intensity permitted by the land use or housing elements

RENTAL INCLUSIONARY HOUSING

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- AB 1505 restores the ability of counties to adopt inclusionary housing policies for rental projects
- The Bill explicitly supersedes the California Court of Appeal's 2009 decision in *Palmer/Sixth Street Properties LP v. City of Los Angeles (Palmer)*
- The policies must meet certain standards and the Department of Housing and Community Development (HCD) may review the policies in certain circumstances

ORDINANCE REQUIREMENTS

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- Local governments may require new rental housing include percentage of affordable units
- Ordinances must provide “alternative means of compliance” with inclusionary requirements
- Alternatives *may* include, but are not limited to:
 - ▣ In lieu fees
 - ▣ Land dedication
 - ▣ Off-site development of units
 - ▣ Acquisition and rehabilitation of existing units

PROPOSED LEGISLATION: DENSITY BONUS

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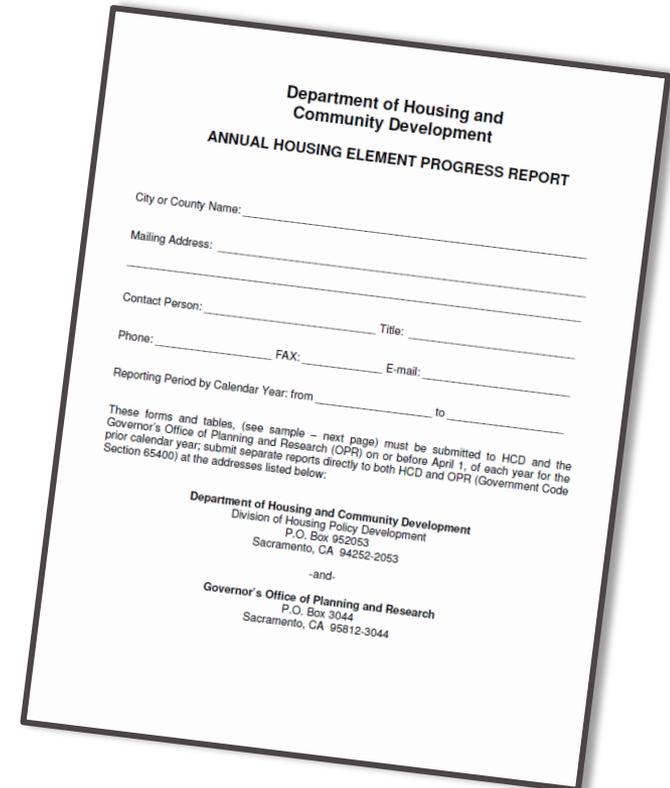
- **SB 1227 (Skinner) - Density Bonus for Student Housing**
- **AB 2372 (Gloria) - Floor Area Ratio Bonus for Affordable Housing**
- **AB 2753 (Friedman) - Revisions to Density Bonus Application**
 - ▣ Local government must notify applicant for Density Bonus in writing w/in 30 calendar days of application of completeness
 - ▣ Local government would have 60 days from complete application to act to approve or disapprove a density bonus
 - ▣ Failure to meet deadlines results in application deemed completed and density bonus granted
- **AB 2797 (Bloom) - Density Bonus and Coastal Act of 1976**
 - ▣ Prohibits local agency from finding a project is inconsistent with Public Resources Code Section 30251 on the basis of density bonus, incentives, waivers, or reduced parking ratios; overturns *Kalnel* and requires harmonizing laws

HOUSING ELEMENTS AND ANNUAL REPORTS

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SB 35 & AB 879

- Housing Element annual reports required from all jurisdictions on April 1 of each year
- New requirements regarding report contents



Department of Housing and
Community Development
ANNUAL HOUSING ELEMENT PROGRESS REPORT

City or County Name: _____

Mailing Address: _____

Contact Person: _____ Title: _____

Phone: _____ FAX: _____ E-mail: _____

Reporting Period by Calendar Year: from _____ to _____

These forms and tables, (see sample – next page) must be submitted to HCD and the Governor's Office of Planning and Research (OPR) on or before April 1, of each year for the prior calendar year; submit separate reports directly to both HCD and OPR (Government Code Section 65400) at the addresses listed below:

Department of Housing and Community Development
Division of Housing Policy Development
P.O. Box 952053
Sacramento, CA 94252-2053

-and-

Governor's Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

HOUSING ELEMENT REQUIREMENTS

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More rigorous analysis will be required during next update cycle. In the meantime. . .

- HCD may revoke finding of housing element compliance
 - ▣ May review actions or “failure to act” that is inconsistent with an adopted housing element or state housing element law, including failure to implement housing element program

- HCD authorized to refer violations to Attorney General

PROPOSED LEGISLATION: HOUSING PRODUCTION

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- **SB 828 (Wiener) – Housing Element**
 - Require local agency to plan and accommodate 200% of RHNA all income categories
- **AB 1771 (Bloom) Revisions to RHNA allocation process**
- **AB 2923 (Chiu) – BART TOD Guidelines**
 - Require BART to adopt new transit oriented development guidelines and jurisdictions to conform zoning to BART standards
- **AB 3147 (Caballero) – Fee Mitigation Act**
 - No increased fees under Mitigation Fee Act once project application is deemed “complete”

ACCESSORY DWELLING UNITS

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- **AB 494/SB 229** continue to ease ADU restrictions
 - ▣ 'Interior ADUs' in all districts permitting s-f homes
 - ▣ Less ability to limit tandem parking and parking in setbacks

- HCD expressly authorized to review ordinances



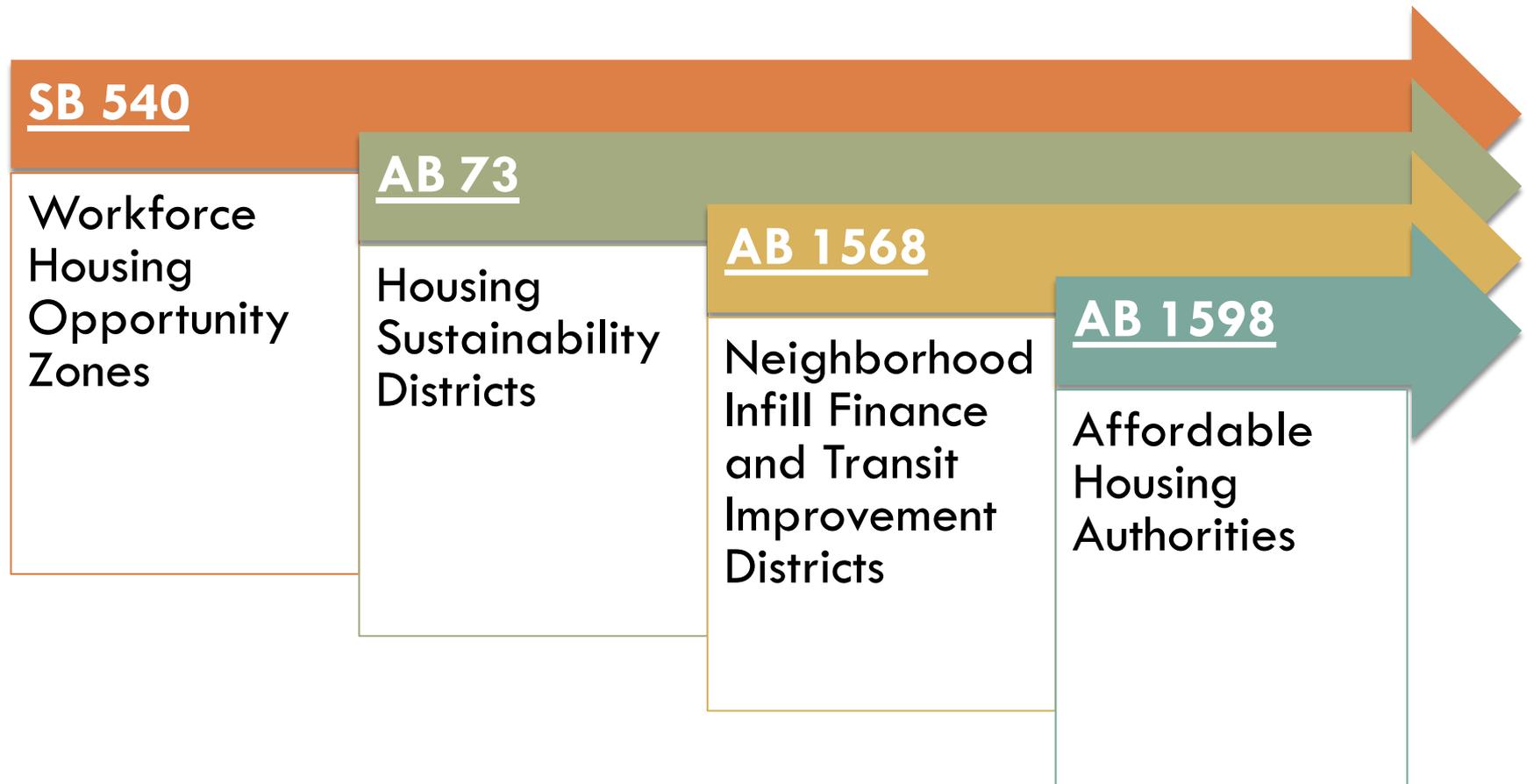
PROPOSED LEGISLATION: ACCESSORY DWELLING UNITS

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- **AB 2890 (Ting)**
- **SB 1469 (Skinner)**
- **SB 831 (Wieckowski)**
 - ▣ Focus on limiting ADU fees
 - ▣ Relaxed development standards (no FAR cap, no parking)
 - ▣ Remove authorization for owner-occupancy requirements

NEW ECONOMIC DEVELOPMENT TOOLS

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PROPOSED LEGISLATION: AFFORDABLE HOUSING FINANCING

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- **SB 912 (Beall and Skinner)**
 - ▣ \$1 billion general fund allocation to HCD for funding programs to address homelessness and affordable housing and \$1 billion for permanent transitional housing for persons below 60% of AMI
- **AB 3171 (Ting)**
 - ▣ General fund allocation to fund Local Homelessness Solutions Accounts
- **AB 3152 (Chiu) Welfare Exemption for Moderate Income Housing**
 - ▣ Property tax welfare exemption for qualified non-profit owners of moderate- income housing



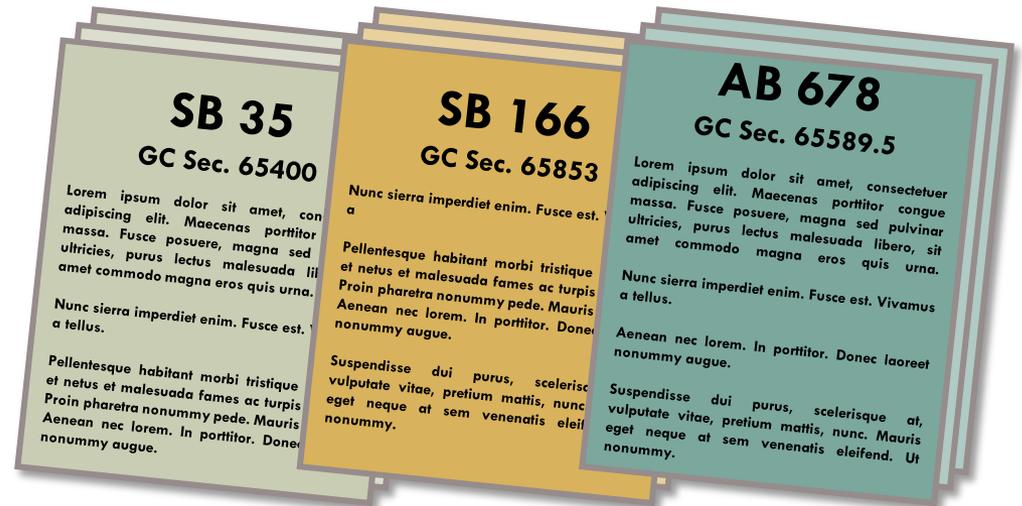
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